148 U. S. 124

RECORD, CASE NO. 15028.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1892.

TERM NO., 1061.

THE UNITED STATES, APPELLANT,

vs.

AARON S. POST.

APPEAL FROM THE COURT OF CLAIMS.

FILED APRIL 25, 1892.

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1 IN THE COURT OF CLAIMS.

AARON S. POST
vs.
THE UNITED STATES. } No. 16974.

I. The original petition in this cause was filed March 26, 1861, by the claimant.

Defendants filed a traverse of said petition May 23, 1891.

By leave of court claimant filed an amended petition in lieu of the original petition January 11, 1892, as follows:

Amended petition filed January 11, 1892.

To the Honorable the Court of Claims:

The claimant above named respectfully represents:

I. That he was, by due and regular appointment, from the 24th day of May, in the year 1888, to the 31st day of December, in the year 1889, a letter-carrier in the post-office at the city of Salt Lake City, in the Territory of Utah, of the class entitled to a salary of $850 a year.

II. That during the period aforesaid he was from time to time, actually and necessarily employed in excess of eight hours a day in the performance of the duties assigned to him as such carrier, aggregating an excess, as aforesaid, of 2,236¼ hours.

III. That by an act entitled "An act to limit the hours that letter-carriers in cities shall be employed per day," the claimant became entitled to, and hereby claims, extra pay for all the time during which he was employed, as aforesaid, in excess of eight hours a day; that he has applied to the Post-Office Department for payment of the same, and that the same has not been paid.

2 IV. That no other action than as aforesaid has been had on this claim in Congress or by any of the Departments; that the claimant is the sole owner of this claim and the only person interested therein; that no assignment or transfer of this claim, or of any part thereof or interest therein, has been made; that the claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets; that the claimant is a citizen of the United States. And the claimant believes the facts as stated in this petition to be true.

And the claimant prays judgment for $805.05, besides costs.

GEORGE A. KING,
Attorney of Record.

CHARLES & WILLIAM B. KING,
Counsel.

DISTRICT OF COLUMBIA, *ss:*

William B. King, being duly sworn, deposes and says that he is one of the attorneys for the claimant; that he has read the above petition, and that the matters therein stated are true, to the best of his knowledge and belief.

WM. B. KING.

Subscribed and sworn to before me this 7th day of January, 1892.

ADELAIDE M. HAMILTON,
Notary Public.

Petitions B, C, D, E, F, G, H, I, in same form, claiming amounts set forth in request for findings.

3 II.—*Traverse of amended petition filed February* 1, 1892.

And now comes the Attorney General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

JOHN B. COTTON,
Assistant Attorney General.

4 III.—*Findings of fact and conclusions of law.*

The court, upon the evidence, finds the following facts:

I.

The claimants were letter-carriers at the post-office at Salt Lake City, in the Territory of Utah, between May 24, 1888, and December 31, 1889, their respective terms of service, classes, and salaries being as hereinbelow set forth, viz:

Name.	Term.	Class.	Salary.
A. Aaron S. Post	May 24, 1888, to December 31, 1889.	Second	$850
B. Charles C. Slade	May 24, 1888, to December 31, 1889.	...do	850
C. Rue H. Sholes	May 24, 1888, to March 31, 1889	Third	600
	April 1, 1889, to December 31, 1889.	Second	850
D. William W. Wiscomb	May 24, 1888, to December 31, 1889.	...do	850
E. Samuel R. Skidmore	May 24, 1888, to Apr 1 30, 1889	Third	600
	May 1, 1889, to December 31, 1889	Second	850
F. Charles E. Hayward	November 1, 1888, to October 31, 1889.	Third	600
	November 1, 1889, to December 31, 1889.	Second	850
G. Walter Wiscomb	May 24, 1888, to December 31, 1888	...do	850
	November 1, 1889, to December 31, 1889.	Third	600
H. Joseph L. Weiler	May 24, 1888, to November 30, 1888	...do	600
	December 1, 1888, to December 31, 1889.	Second	850
I. Brigham L. Morse	January 1, 1889, to December 31, 1889.	Third	600

II.

During their aforesaid terms of service said claimants were actually employed in the performance of their duties more than eight hours a day, the excess over such eight hours being shown in the following finding:

III.

The manner, time, and nature of their employment was generally as follows:

They were required to report for duty at the post-office at 7 a. m.

From 7 to 7:30 they were employed within the post-office in the distribution of mail matter; that is to say, in taking letters and papers from newly arrived pouches, assorting them, and placing them in the boxes for box and general delivery.

From 7:30 to 8 they were severally engaged in arranging their own mail matter for carrier delivery by streets and numbers, and where the residence of a person was not expressed in the direction of a letter and was not known or remembered, in looking it up in the directory.

From 8 to 11 they were occupied on their routes in delivering and collecting mail matter.

From 11 to 11:30 they were engaged within the post-office building in making returns of persons not found and other things connected with their route delivery.

From 11:30 to 1 they were employed within the post-office in the general distribution of mail matter.

From 1 to 2 they were absent and off duty.

From 2 to 3:30 they were again employed on the post-office work of distributing general mail matter.

From 3:30 to 4 they were severally engaged in arranging their own mail matter for delivery.

From 4 to 6 they were again occupied on their routes in delivering and collecting mail matter and in making their returns.

From 6 to 7 they were again absent and off duty.

From 7 to 8 they were again employed on the post-office work of distributing general mail matter.

The above statement represents an ordinary or average day's employment. The time of going out and the time of being out on the routes in fact varied with the size of the mail, as did the time of their being relieved from duty at night. But their reporting for duty at 7 in the morning, at 2 in the afternoon, and at 7 in the evening was constant.

The above statement does not apply to Sundays. On Sundays the carriers made no deliveries. They were employed, however, in the office; but the time of employment did not exceed eight hours. During the time covered by this claim there were 9 carriers and 3 clerks employed in said post-office.

IV.

The carriers, by one of their number, remonstrated against the performance of work not connected with their duties as carriers. The postmaster, however, held that "under the regulations the postmaster could use them in that service." He therefore required them to perform it.

V.

During the time embraced within the present claims the following regulations of the Post-Office Department were in force, all under the general title, "Free-Delivery Service" (Postal Laws and Regulations, 1887, pp. 259, 261, 266, 268, 269):

"SEC. 628. Postmasters to supervise carrier service.—Postmasters will supervise their carrier service, and are specially enjoined—

"1. To see that superintendents, carriers, and clerks connected with this service are fully informed as to their responsibilities and duties. * * *

6 "3. To frequently visit the stations and see that the regulations are there observed and proper order and discipline maintained.

"4. To issue all necessary orders and instructions necessary to carry out the regulations and promote the efficiency of the service.

"5. To reprimand the carriers for irregularities or report them for removal to the Superintendent of Free Delivery, as the nature of the offense may require. (See section 642.)

"SEC. 642. Reprimand, suspension, and removal.—The due performance of their duty by carriers, and the observance of law, regulations, and orders prescribed for their conduct, will be enforced by reprimand for slight offenses; by suspension with loss of pay for more serious ones, not, however, to exceed thirty days; and by suspension and recommendations for removal for grave offenses, or persistent disregard of the rules herein prescribed, or of the orders of the postmaster not inconsistent herewith. In all other cases of recommendation for removal, carriers should not be suspended, but postmasters should await the action of the Department."

All the following are under the subtitle, "General Duties of Carriers."

"SEC. 647. *Duties generally.*—Carriers shall be employed in the delivery and collection of mail matter, and during the intervals between their trips may be employed in the post-office in such manner as the postmaster may direct, but not as clerks.

"The delivery and collection by them must be frequently tested at irregular intervals, to determine their efficiency.

"SEC. 648. *Delivery of matter.*—The mails must be assorted and the carriers started on their first daily trip as early as practicable. They must proceed to their routes with expedition and by the most direct way. A schedule of the order of delivery of each route should be made in a legible hand by names of streets and numbers of houses, and the mail delivered according to such schedule. Mail matter directed to box numbers must be delivered through the boxes. Mail matter addressed to street and number must be delivered by carriers unless otherwise directed. Mail matter addressed neither to a box-holder nor to a street and number must be delivered by carrier if its address is known or can be ascertained from the city directory; otherwise, at the general delivery.

"SEC. 649. *Care in delivery of mail.*—Carriers will exercise great care in the delivery of mail to the persons for whom it is intended, or to some one known to them to be authorized to receive it. They will, in case of doubt, make respectful inquiry with the view to ascertain the owner. Failing in this they will return the mail to the office, to be disposed of as the postmaster may direct.

"SEC. 651. *Directory to be used to ascertain addresses.*—Where a directory is published it must be used when necessary to ascertain the address of persons to whom letters are directed, and it should also be used in the case of transient newspapers and other matter of the third and fourth classes, where the error in or omission of street address is evidently the result of ignorance or inadvertence; but when circulars, printed postal cards, or other matter, except letters, shall arrive at any post-office in large quantities, apparently all sent by the same person or firm, and from which the street addresses have been purposely omitted, the directory need not be used to supply such omission, and all of such circulars, etc., which can not readily be delivered through boxes or by carriers, shall be sent to the general delivery to await call."

VI.

In the case of Aaron S. Post, the claimant, between the 24th day of May, 1888, and the 31st day of December, 1889, was employed by order of the postmaster in excess of eight hours a day, as follows:

Before 7 a. m., the regular hour when the carriers reported for duty, he arrived at the office and opened the eastern mail, which came at about 5 in the morning, in order to prepare the same for the southern mail. This was done so that it would not have to lie over twenty-four hours. The time thus employed was two hundred and forty-six and one-half hours.

During intervals between 7 a. m., when carriers reported for duty, and 6 p. m., when their work as carriers ended, he was employed in the office in opening the mail, stamping it, and distributing the same as hereinbefore stated in excess of eight hours, nine hundred and eighty-six hours.

After his last trip and his returns as carrier were made—*i. e.*, after 7 p. m.—he was employed on the post-office work of distributing general mail matter in the office four hundred ninety-three hours.

CONCLUSION OF LAW.

On the foregoing finding of fact the conclusion of law is that the claimant, Aaron S. Post, is entitled to recover for one thousand seven hundred and twenty-five and a half hours of extra work, amounting, at the rate of 29.1 cents per hour, to $502.12.

7 *IV.—Opinion of the court.*

NOTT, J., delivered the opinion of the court.

These cases affect the compensation of probably all the letter-carriers in the United States. The statute under which they arise is singularly brief and clear, and expresses in unmistakable terms the legislative intent. But the services of letter-carriers are so peculiar and ill-defined that the application of the law to the facts is no easy task. The statute is in these words:

"That hereafter eight hours shall constitute a day's work for letter-carriers in cities or postal districts connected therewith, for which they shall receive the same pay as is now paid for a day's work of a greater number of hours. If any letter-carrier is employed a greater number of

hours per day than eight, he shall be paid extra for the same in proportion to the salary now fixed by law." Act 24th May, 1888 (25 Stat. L., p. 157.)

So far as compensation is involved there are four classes of carriers, receiving annual saleries of $1,000, $850, $800, $600. Act 31 Jan'y, 1887 (24 Stat. L., p. 855). So far as services are involved there are apparently two classes: one like the carriers in New York, and probably in all the great ctties, who are occupied incessantly from morning to night without an intermission for rest or food; and one like the carriers in Salt Lake City, who have a morning and afternoon collection and delivery which per se requires less than eight hours of service.

On the part of the claimants it is maintained that all of the work which letter-carriers perform by order of their postmasters is service contemplated by the statute, and that in estimating the extra service an extra hour is not to be reckoned as the eighth part of a day; but that the court and the accounting officers must take into consideration the
8 fact that under another statute they are entitled to fifteen days' leave of absence without loss of pay (Act 27th June, 1884, 23 Stat. L., p. 60), and under the postal laws and regulations to six holidays during the year (Regulations 1887, sec. 483), and that at common law they are not required to render service on Sunday, and by the Regulations, sec. 481, only for a brief period, leaving two hundred and ninety-two days in the year which should be taken as the divisor of their annual salary, instead of three hundred and sixty-five.

On the part of the defendants, it is maintained that the only service which is to be reckoned in estimating the eight-hour day is carrier service proper; that the Regulations, sec. 647, provide that:

"Carriers shall be employed in the delivery and collection of mail matter, and during the intervals between their trips may be employed in the post-office in such manner as the postmaster may direct, but not as clerks."

And the Revised Statutes, sec. 1764, provide that.

"No allowance or compensation shall be made to any officer or clerk, by reason of the discharge of duties which belong to any other officer or clerk in the same or any other department; and no allowance or compensation shall be made for any extra services whatever, which any officer or clerk may be required to perform, unless expressly authorized by law (§ 1764)."

Hence it is argued that the statutes and regulations are to be construed together, and that the additional pay which the eight-hour act grants is to be restricted to cases where the carrier performed service authorized by law; that is to say, the service of a carrier and not of a clerk.

The Salt Lake City cases, it is believed, embraced, with a single exception, all the questions presented by the New York cases and many more besides. We will therefore deal with the facts which they bring before the court.

In the Salt Lake City post-office the force employed consisted of three clerks and nine carriers. It appears from the testimony of the postmaster himself that the three clerks were insufficient to perform the work of the office; and it appears from the evidence that the work of the carriers in delivering and collecting letters outside of the post-office building did not ccupy them more than five hours a day. A third kind of work appears

in the case, which has been one of the debatable grounds of the argument, viz, the work which carriers perform within the post-office building upon the mail matter which they are to deliver. Before they go out on their rounds each takes a package of unassorted letters, i. e., no further assorted than to segregate from the mass those which belong to each carrier's route, and arranges them in the order of street and number. This is called "routing" the letters. Where the street and number are not given in the direction on the letter this service also involves looking up the residence in the directory or in noting it from memory. After the carrier returns from his round he also has work to do in connection with his carrier service, such as returning letters where the party to whom they were addressed could not be found.

In the Salt Lake office the carriers, by order of the postmaster, rendered the following service during each working day:

At 7 a. m. the carriers reported for duty. For half an hour they were employed inside the post-office proper in distributing the mail, by placing it in the general delivery boxes. For half an hour they were occupied in "routing" their own letters; that is, in arranging them for ready distribution on their rounds. At 8 a. m. they went out on their first delivery,
9 returning at various times, according to the quantity of mail matter to be delivered, but generally within three hours. From the time of their return until 1 p. m. they were engaged within the post-office in the distribution of the mail. From 1 to 2 they were allowed an hour for dinner. At 2 all were required to report for duty. For an hour they were again engaged in the distribution of the mail and in "routing" their own letters. At 3 they went out on their second delivery, returning ordinarily about 5 o'clock. From 5, with an interval of an hour for supper, they were again employed in the work of distributing the mail until ordinarily 8 o'clock or later.

Such was the ordinary day of a letter-carrier in this office. It may be analyzed by saying that he was absent from home thirteen hours; that he was allowed two hours for his meals; that he was occupied outside the building in the work of delivering and collecting letters five hours; that he was occupied in preparing his mail matter for the route and in making reports and returns in regard to it two hours; and that he was employed in the work of distributing letters within the building for general delivery four hours. It is also to be observed that for at least an hour this work was not performed "during the intervals between his trips" (in the words of the regulation above quoted), but was performed after his last service as a letter-carrier had ended.

The work which letter-carriers may do during the intervals between their trips and the work which they may not do as clerks are wholly undefined. No regulation, order, or instruction of the Post-Office Department can be found which would inform postmasters or enlighten the court as to what these services are. The term clerical service, strictly, means a service that involves writing. It may be that the regulation was intended to prohibit the carriers from writing reports, making up accounts, registering letters, selling stamps, issuing money orders; and that the manual labor of assorting a handful of letters and throwing them into the appropriate boxes was not intended to be forbidden. It may be that the regulation was in the nature of a police precaution against post-office robberies,

by keeping the responsibility in the fewest possible hands. It may be that it was intended to keep each expense of the post-office within its proper appropriation. But certainly the regulation contemplated the employment of carriers on other work than collecting and delivering letters, and authorized postmasters so to employ them "during the intervals between their trips," and compelled carriers to render such service.

Here, then, was a post-office with three clerks and nine carriers, the united force of which was barely able to carry on its business. Under the stress of circumstances the postmaster interpreted the regulation to mean that he might exact from the carriers additional work in the distribution of mail matter within the office, and the court is not prepared to say that his interpretation was wholly and clearly wrong.

Coming now to the kind of work done by the carriers, the court is unqualifiedly of the opinion that whatever work they may be required to do, relating to the mail matter which they distribute and collect, must be regarded as carrier service in construing and applying the eight-hour law. A carrier may receive the letters of his own route and simply arrange them in the order of the streets and numbers; or, all the carriers may receive all the letters which go out by the carrier system, and be obliged to divide the mass according to the routes; or they may have handed to them the newly-arrived mail pouches and be obliged to divide the matter which is to go out from the matter which is to remain within the post-office; that is, the carriers' letters from the box and general delivery letters. We do not say that this last arrangement is wise or judicious; but simply that if carriers are thus employed by the postmaster under whom they serve it will be, in the present state of the law and regulations, carrier service.

As to the distribution of mail matter for boxes and general delivery by carriers during the intervals between their trips, the court can not say in the silence of the Postmaster-General whether it was or was not the clerical service prohibited by the regulation, and in this uncertainty must adopt the construction given by the postmaster to the regulation, a construction which was apparently known to the Department, and which for the purposes of this case must be regarded as the construction of the Department itself.

As to the last kind of service, that which was not rendered during intervals but after the carriers' day was over, the case is not so clear. The regulation did not by any construction authorize the postmaster to exact this, and it involved the Government under the eight-hour law in an additional liability and was in its practical effect employing one man to do another man's work, contrary to the intent of the Revised Statutes, if section 1764 is applicable to these cases. We agree with the counsel for the defendants that the eight-hour law was not intended as a door of evasion whereby a postmaster could bring into his office additional clerks to do work for additional pay, but the question is doubtful, the necessities of the situation were great, the good faith of the postmaster is undisputed, and the equities of the case are so strongly in favor of the carriers that we deem it only just to resolve doubts in favor of the claimants, who have no right of appeal, leaving it to the Supreme Court to correct the error, if error it be.

We now come to the manner in which this additional time must be reckoned in dollars and cents. As has before been said, the claimants in-

sist that the year should be divided by 292 days instead of 365, and the value of a day of eight hours proportionately increased. From this day of augmented value, it is maintained the value of the additional hours must be derived.

The principle of excluding apparent time which the counsel for the claimants applies to days, the counsel for the defendants, though by a different process of reasoning, applies to hours. He maintains that the additional hours intended by the statute are additional to the carrier's actual hours of service as carrier; that it is not the time during which the carrier is nominally on duty which is to be reckoned, nor the time when the employment proper or improper is within the post-office building, but the time when the carrier is actually engaged in delivering and collecting letters. If the services are more than eight such hours he is entitled to ask additional pay; otherwise, not. Or, as was said on the argument, "The door of the post-office defines the service; service without is carrier service, service within is clerical service." It is apparent that the principle will cut both ways. Applied to days it will augment the value of the additional service, but as very few carriers are actually on their feet eight hours a day running about the streets, it will cut down the hours until there is no additional time left to be paid for.

11 The statute which attaches an annual salary to the service does not fix the amount as compensation for 359 days, i. e., for a year, less six holidays; nor as compensation for 350 days, that is, for a year less 15 leave-of-absence days; nor as compensation for 344 days, i. e., a year less the holidays and leaves of absence; nor for 292 days, i. e., for a year without holidays, leave-of-absence days, or Sundays. The salary is for a year, and when it was enacted covered all service which the carrier might render or be required to render within a year.

If the suit were brought to recover an unpaid balance of salary we are inclined to think that no question which has been raised by one side or the other would have appeared. If a claimant had held office one day and the suit was to recover one day's pay, we believe that the damages demanded would have been for $\frac{1}{365}$th of the annual salary. Conversely, if the suit had been brought to recover one year's pay, less one absent day, we doubt whether it would have entered into any mind to deduct more than $\frac{1}{365}$th for that day. It can not be supposed that a claimant would have said, "In crediting the Government with the value of this one day's deduction, I should credit more than $\frac{1}{365}$th of my year's pay. I should take into consideration Sundays, holidays, leave-of-absence days, and credit the Government with more—with $\frac{1}{292}$ of my annual salary." Neither can we believe that the counsel for the Government would have asked such a computation. Time out of mind men have been employed by the year, and certainly we can recall no case for work and service where a court has introduced such refinements into the measure of damages.

The Treasury computation of the pay of all officers and employés on annual salaries is made substantially on the ordinary basis. The year is divided into four calendar quarters which are almost exactly equal, the first and second on a leap year containing 91 days each, the third and fourth 92. In reckoning a day's pay the fourth part of the annual salary is divided by the number of days in that quarter. In ascertaining this

the Treasury disregards Sundays and holidays. If a man holds an office or employment two days in a year he is credited for two days, though one of them may be a Sunday and the other a holiday.

A statute of this nature must be interpreted in conformity with the system upon which it is engrafted. This judgment to be declared here by the court is not an isolated judgment which, when satisfied, will pass out of existence and leave no disturbing element behind it. On the contrary, it will furnish a rule of decision for the Department. Hundreds of carriers will be paid on it for years past and continue to be paid for years to come. Assuredly the judiciary must not give an interpretation to the act which will bring trouble and confusion into the Executive Departments unless its language imperatively requires it.

There is nothing in this statute indicative of the principle by which the value of the extra time shall be computed, and whatever the principle may be it is manifest that regular time and extra time should be estimated by one and the same rule. If the judiciary prescribes one principle and the accounting officers proceed on another, it is evident that two rates of pay will be given to the different hours of the same day. For eight hours of a day the computation will be on the basis of 365 days in the year; for the additional hours, on the basis of 292; and thus trouble and con-
12 fusion will be brought into the account. A monthly payroll may show that on the first day a carrier was on duty eight hours; on the second, nine hours; on the third, ten hours; on the fourth, eight hours, etc. The numbers are added, the total is multiplied by the value of the hours at the prescribed annual salary, ascertained from the formulas of the Department. But if the accounting officers have to examine every carrier's time for every day in the month and segregate hours which belong to a year of 292 days from hours which belong to a year of 365 days, the statute will have brought a confusing element into the work of accounting which never could have been anticipated by the law-making power.

There is one consideration which seems conclusive of the question. This statute was not intended to change the usage of the Treasury nor to disturb the existing rate of pay, and avowedly does nothing more than provide that the increased pay shall be in proportion to the increased work That is to say, it does not change the rate of compensation; nor does it provide that a carrier shall be paid for regular work at the rate of $1,000 a year and for extra work at the rate of $1,250. On the contrary, both regular work and additional work are to be paid for at the same rate, however they may be computed. Now, if the construction contended for be given to this statute, the result will be that if a carrier is absent without leave two hours on Monday he will be charged for the two hours of absence on a basis of 365 days in a year, while if he works ten hours on Tuesday he will be credited with two hours excess of time on the basis of there being 292 days in the year. Nothing can be more preposterous than to construe a statute which expressly proportions increased pay to increased work so that a deduction shall be debited at one rate and an addition be credited at another. Certainly if the principle advanced for crediting letter-carriers for extra time is right the principle on which the Treasury has debited officers and employés this hundred years and more for absence is wrong.

The counsel for the defendants has suggested that while the delivery of mail matter is a service which requires the greatest possible promptitude, this eight-hour law may operate as a bounty on tardiness and unnecessary delay, and, therefore, should not receive an interpretation conducive to that evil effect. And the Post-Office Department has also said in its circular of instruction that "more than a million dollars annually" is expended in this free-delivery service, and that in consequence of the eight-hour law "1,852 additional carriers were appointed during the fiscal year of 1888 to enable postmasters to bring the hours of service within the limits of that law." It is undoubtedly true that the system of an eight-hour service involves great expense and is subject, or may be subject, to abuses. But these are evils to be corrected by statutes and regulations; they can not be prevented by a strained construction of the law. The intent of the legislative authority as declared by the law itself must have full effect given to it by the judiciary.

In the New York cases a single question arises which was not presented by the others. On week days the carriers were employed more than eight hours, but on Sundays less, and the deficit of the latter nearly equals the excess of the former. The Post-Office Department, by its circular February 19, 1891, has directed postmasters "to determine the
13 time a letter-carrier may have been required to work during any month in excess of eight hours per day, as follows:

"Ascertain the aggregate hours worked during the month. Multiply the number of days worked during the month by eight, and subtract the product thus obtained from the aggregate number of hours worked, and the remainder will be the extra time for which the carrier is entitled to pay at the following rates:

Salary.	First quarter.	Second quarter.	Third and fourth quarters.	Average quarter.
$600	20⅞ cents per hour ..	20⅝ cents per hour	20⅝ cents per hour	20⅝ cents per hour.
800	27½ cents per hour .	27½ cents per hour ..	27½ cents per hour	27½ cents per hour.
850	29½ cents per hour .	29½ cents per hour ...	28⅝ cents per hour	29 5-24 cts. per hour.
1,000	34⅝ cents per hour ..	34⅜ cents per hour ...	34 cents per hour	34¼ cents per hour.

"The time necessarily consumed in the performance of the service between 'Report for duty' and 'End of duty' is the 'actual time' to be allowed, and the interim between deliveries is the carrier's own time, and can not in any case be charged against the United States."

The carriers' eight-hour law declares "that hereafter eight hours shall constitute a day's work," but it allows compensation to continue in the form of an annual salary, and requires no deduction to be made if the duties of the day do not extend through the prescribed time. It also declares that "if any letter-carrier is employed a greater number of hours per day than eight he shall be paid extra for the same." To sustain the interpretation given to the act by the Department, it will be necessary to read in it by construction the words "on an average," i. e., if any letter-carrier is employed on an average a greater number of hours per day than eight, he shall be paid extra for the same. This the court is not at liberty to do. The carrier is entitled to eight hours' work, and to his pay if work is not furnished to him. For any excess on any day he is entitled to extra pay.

The only set-off that can be maintained is when he is absent from duty without leave. The Department is at liberty to keep a carrier employed eight hours every day, but not to give him a deficit of work one day and an excess another.

In the case of Aaron S. Post the judgment of the court is that the claimant recover of the defendants the sum of $502.12.

In the case of Frank Gates the judgment is that the claimant recover the sum of $56.48.

In the remaining cases submitted judgment will be suspended until the further order of the court.

14 V.—*Judgment of the court.*

AARON S. POST
vs.
THE UNITED STATES. } 16974.

At a Court of Claims held in the city of Washington on the 10th day of March, A. D. 1892, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for claimant, and do order, adjudge, and decree that the said Aaron S. Post do have and recover of and from the United States the sum of five hundred and two dollars and twelve cents ($502.12).

BY THE COURT.

15 VI.—*Application for and allowance of appeal.*

AARON S. POST
vs.
THE UNITED STATES. } No. 16974.

From the judgment rendered in the above-entitled cause on the 10th day of March, 1892, in favor of claimant, the defendants, by their Attorney-General, on the 30th day of March, 1892, make application for, and give notice of, an appeal to the Supreme Court of the United States.

JOHN B. COTTON,
Assistant Attorney-General.

Filed and allowed in open court March 30, 1892.

WILLIAM A. RICHARDSON,
Chief Justice.

16 IN THE COURT OF CLAIMS.

AARON S. POST
vs.
THE UNITED STATES. } No. 16974.

I, John Randolph, asssistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the con-

clusion of law thereon, of the opinion of the court, of the judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 23d day of April, A. D. 1892.

[SEAL.] JOHN RANDOLPH,
Ass't Clerk, Court of Claims.

(Indorsement on cover:) Court of Claims. Case No. 15028. Term No. 1061. The United States, appellant, *vs.* Aaron S. Post. Filed April 25th, 1892.

148 U 8124

Office Supreme Court U. S.
FILED.
FEB 8 1893
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES, APPELLANT,
vs.
AARON S. POST.
No. 1061.

BRIEF FOR APPELLANT.

HENRY M. FOOTE,
Assistant Attorney.

In the Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES, APPELLANT,
vs.
AARON S. POST. } No. 1061.

APPEAL FROM THE COURT OF CLAIMS.

STATEMENT AND BRIEF OF ARGUMENT FOR APPELLANT.

STATEMENT.

This is an appeal from a judgment rendered by the Court of Claims against the United States in favor of Aaron S. Post for the sum of $502.12.

Claimant was a letter-carrier of the second class, with a salary of $850 per year, at the post-office at Salt Lake City, in the Territory of Utah, between May 24, 1888, and December 31, 1889.

It is alleged that during the period stated, he was employed in the discharge of his duties in excess of

eight hours a day, and therefore is entitled to receive compensation in addition to his regularly paid salary under the provisions of the following statute:

> That hereafter eight hours shall constitute a day's work for letter-carriers in cities or postal districts connected therewith, for which they shall receive the same pay as is now paid as for a day's work of a greater number of hours. If any letter-carrier is employed a greater number of hours per day than eight, he shall be paid extra for the same in proportion to the salary now fixed by law. (25 Stat. L., p. 157).

The question in this case is the construction of this statute.

It is urged on the part of the appellant that it only has reference to letter-carrier service, and therefore before claimant can bring himself within its provisions he must not only show that he has performed eight hours of service in a day, but that the same must have related exclusively to the free distribution and collection of mail matter, and that the extra service claimed for must necessarily have been of the same character.

It is believed that plaintiff is not entitled to judgment for the performance of extra service in the post-office not connected with his duties as letter-carrier, by reason of section 1764 of the Revised Statutes, which provides that:

> No allowance or compensation shall be made to any officer or clerk by reason of the discharge of duties which belong to any other officer or clerk in the same or any other department, and no allowance or compensation shall be made for any extra services whatever which any officer or clerk may be required to perform, unless expressly authorized by law.

And section 1765, which provides—

> That no officer in any branch of the public service, or any other person whose salary, pay, or emoluments are fixed by law or regulations shall receive any additional pay, extra allowance, or compensation in any form whatever for the disbursement of public money, or for any other service or duty whatever unless the same is authorized by law and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation.

The Court of Claims, from the evidence, found the following facts:

> That Aaron S. Post, the claimant, between the 24th day of May, 1888, and the 31st day of December, 1889, was employed by order of the postmaster at the post-office at Salt Lake City, in the Territory of Utah, in excess of eight hours a day, as follows:
>
> (*a*) Before 7 a. m., the regular hour when carriers reported for duty, he arrived at the office and opened the eastern mail, which came about 5 in the morning, in order to prepare the same for the southern mail. This was done so that it would not have to lie over twenty-four hours. The time thus employed was 246½ hours.
>
> (*b*) During intervals between 7 a. m., when carriers reported for duty, and 6 p. m., when their work as carriers ended, he was employed in the office in opening the mail, stamping it, and distributing the same, as hereinbefore stated, in excess of eight hours, 986 hours.
>
> (*c*) After his last trip and returns as carrier were made, *i. e.*, after 7 p. m., he was employed on the post-office work of distributing general matter in the office 493 hours.

ASSIGNMENT OF ERROR.

The court erred in its conclusion of law on the facts found, that the claimant, Aaron S. Post, is entitled to recover for 1,725½ hours of extra work, amounting, at the rate of 29.1 cents per hour, to $502.12.

ARGUMENT.

The system of the free delivery of mail matter was established by the act of June 8, 1872. (Sec. 3865, Rev. Stat.)

As an incident to the system the employment of letter carriers was authorized whose salaries were to be fixed by the Postmaster-General.

Persons thus employed are to be distinctly recognized by being compelled to wear a uniform while on duty. A bond is required, with sureties to be approved by the Postmaster-General, for the safe custody and delivery of all mail matter and the faithful account and payment of all moneys received.

Under the provisions of the act of January 3, 1887 (Supp. Rev. Stat., 518), the prior act was amended so as to authorize the employment of carriers in cities containing less than 20,000 inhabitants.

In cities containing a population of 75,000 or more, three clas-es of letter-carriers were created, with corresponding salaries; and in places containing a population of less than 75,000, two classes, with corresponding salaries.

Claimant was included in the last classification.

It is thus seen that the prior act remains unrepealed, except only as it relates to classification and salary.

During the time embraced within the present claim sections 628, 642, 647, to and including 651 of the Postal Laws and Regulations of 1887 were in force relating to free-delivery service. Section 647 relates more particularly to the subject under consideration, and reads as follows:

> Carriers shall be employed in the delivery and collection of mail matter, and during the intervals between their trips may be employed in the post-office in such manner as the postmaster may direct, but not as clerks.

The purpose of the statutes is the employment of a class of persons in the postal service whose duties are a necessary incident to the creation of the free-delivery service, and we contend that the law not only in plain terms, but by necessary implication, defines their services to be a distribution and collection of mail, and such other duties as are necessarily incident thereto, such as receiving the mail allotted to them by clerks in the post-office and arranging it for distribution, and making a proper disposition of the same when not delivered upon their return to the post-office. That any other service which a carrier may perform, is not contemplated by the act of May 24, 1888, *supra*, and is an extra service within the meaning of sections 1764 and 1765 of the Revised Statutes, *supra*, the payment for which is not authorized by law.

Counsel in the argument of this case below relied upon that provision of the regulations (647 *supra*) which provides—

> That during the interval between trips carriers may be employed in the post-office in such manner as the postmaster may direct, but not as clerks.

And it was contended that it authorized the extra service for which claim was made; and the court (although expressing doubts) entertained this view of the case.

The question presented does not depend as much upon the regulation as it does upon a construction of the statute of May 24, 1888. For it is apparent that if it contemplates compensation for extra service other than such as is incident to the free delivery and collection of mail matter, that any service is comprehended, and the regulation, therefore, becomes inoperative.

The regulation may serve the purpose of aiding in a determination of what are to be considered the regular duties of a letter-carrier, but aside from this the statute must govern in determining the rights of the respective parties.

The court was, therefore, in our opinion, in error in undertaking to harmonize the regulation with the statute, as it is obvious that the law must receive either a liberal or strict construction; if the former, then the regulation can not limit its operation; if the latter, it can not increase the responsibilities of the Government.

Before proceeding to discuss the provisions of the statute of May 24, 1888, *supra*, it may be proper to call the attention of the court to the character of these services.

It is found that none of this work was incident to appellee's general duties as a carrier; 839½ hours of his time were employed before his regular duties began in the morning and after they had ended for the day, while 246½ hours were devoted to opening, stamping, and distributing the mail at a time during the day when there were no regular carrier duties to perform.

The court has found generally (finding 3), and stated in its opinion (p. 3), that appellee was occupied in the work of delivering and collecting letters outside the office five hours, and in preparing his mail for the route and in making reports and returns two hours, thus consuming but seven hours of each day in the discharge of his duties connected with the delivery and collection of mail matter.

The questions presented are: Does this statute contemplate extra compensation for any kind of service which a letter-carrier may perform not connected with his general duties as a carrier, or does it relate exclusively to such extra service as is connected with his general duties as a carrier.

And is he entitled to compensation for extra service when not employed eight hours a day in the performance of his general duties as a carrier.

The statute under consideration in some respects is similar to the act of June 25, 1868 (15 Stats., 77), which provides that eight hours shall constitute a day's work for laborers, workmen, and mechanics, and were it not for the latter clause which it contains, we would apply the rule in the case of *Martin* vs. *The United States* (94 U. S., 400), wherein it is said "that the act of 1868 is in the nature of a direction by the Government to its agents, and

is not an agreement between it and the carrier that eight hours shall constitute a day's work." But inasmuch as the statute in this case contains the extraordinary provision of allowing compensation for extra service, it is thought the principle cited may not apply.

In considering this statute the real question is the meaning of the word "employed" found in its second clause.

The term either has a general or limited application. If general, a carrier who has been duly qualified to perform a special duty may be engaged in the ordinary duties of a laborer, and recover for the service compensation as a carrier. In other words, a postmaster may neglect to furnish a sufficient force of persons to perform the various duties connected with the office, whose rates of compensation would vary according to the services required, and direct the carrier force of the office to perform them at a largely increased cost to the Government: the very thing prohibited in sections 1764 and 1765 of the Revised Statutes. The act therefore requires a careful analysis of its provisions.

Congress had under consideration the subject of an indefinite number of hours entering into a day's work of a *particular* kind of service. It was, no doubt, made to appear that in many instances a letter-carrier was necessarily employed an unusual number of hours in the performance of his regular duties. It therefore extended the provisions of the eight-hour law of June 25, 1868, *supra*, to this class of persons, with the additional provision that extra hours should be considered as a part of another day, for

which the annual rate of compensation should be paid. The statute, by a reasonable construction says, eight hours shall constitute a day's work for letter-carrier service. If more than that number of hours are employed *in this service*, the same rate of compensation will be paid as for a regular day of eight hours.

It was not intended that the term "employed" should include any other kind of service. If it had been, Congress could easily have said so, and having failed so to do, it must be presumed that the statute has reference to but one kind of service.

The principle has been well settled in the construction of a statute—

> That where it operates as a grant of public property to an individual, or the relinquishment of a public interest for the benefit of the individual, that that construction should be adopted which will support the claim of the Government rather than that of the individual. Nothing can be inferred against the State. (*Slidell* vs. *Grandjean*, 111 U. S., 437, and cases cited.)

In the many cases cited in Enlich on the Interpretation of Statutes, paragraph 354, the rule is laid down as follows:

> As regards enactments of a local or personal character * * * which invest private persons or bodies for their own benefit and profit with privileges and powers interfering with the property or rights of others, they are construed more strictly perhaps than any other kind of enactment. The courts take notice that they are obtained upon the petitions framed by their promoters, and in construing them as they are

> in effect construed between those persons or those whom they represent and the legislature on behalf of the public, their language is therefore treated as the language of their promoters, who ask the legislature for them (the promoters rather than the legislature being considered as the framers), and when doubt arises as to the construction of that language, the maxim ordinarily applicable to the interpretation of statutes, "that words are to be understood most strongly against him who uses them," is justly applied. The benefit of the doubt is to be given to those who might be prejudiced by the exercise of the powers which the enactment grants and against those who claim to exercise them.

If the statute is to be interpreted creating con trac relations between the carrier and the Government in reference to extra compensation, the rule of interpretation relating to such a contract, is well settled by this court in the case of *Newton* vs. *Commissioners* (100 U. S., 561), where it said:

> * * * Where it [the contract] exists it is to be rigidly scrutinized and never permitted to extend either in scope or duration beyond what the terms of the concession clearly require.
>
> There must have been a deliberate intention clearly manifested on the part of the State to grant what is claimed. Such a purpose can not be inferred from equivocal language.

Referring to sections 1764 and 1765 of the Revised Statutes, *supra*, it is obvious that they contain a prohibition against one person in the employ of the Government receiving extra compensation for performing another man's work, unless authority therefor is expressly given by law.

If, therefore, the act of May 24, 1888, receives a strict construction, it follows that claimant can not recover because he performed service for another instead of his regular duties as a carrier.

But it may be said that Congress had in mind the services of a carrier as defined in regulation 647, *supra*. If so, what duties are contemplated by it?

Its first clause defines them to be the "delivery and collection of mail matter." These it must be conceded, are his regular duties (as we have insisted) under the statutes.

The next clause is a provision for subordinate service, in the discretion of the postmaster, when not required to perform his regular duties as a carrier; and it also contains a prohibition against his being employed as a clerk.

When, therefore, the statute of May 24, 1888, was passed, the only duties which a carrier might be required to perform under the regulation were his regular duties, and when not so employed during the day, some subordinate service. Clearly this intermediate labor was not extra carrier's service, for it had no relation to, and did not increase the hours of his regular work; it was performed when he had nothing else to do. If this view be taken by the court (and we insist that it follows logically from the situation), then the only service which Congress considered was carrier's service as defined in the regulation, *i. e.*, "the delivery and collection of mail matter," and therefore any other, whether permissible or prohibited under the regulation, was not contemplated.

It may, however, be urged that under the provisions of the act of March 3, 1885 (Supp., Rev. Stat., 2d ed.,

p. 483), that the postmaster was authorized to require the extra services of the appellee, and that it was his duty to perform them. To this proposition it is insisted that it is exceedingly doubtful whether the act comprehends any persons except the regular force assigned to office duties; but if it does include those of appellee's class, it presents one of the strongest reasons why the act of 1888 should receive a strict construction. For in such a case Congress is presumed to have had full knowledge of the provisions of the act, and therefore, could not have intended to confer this extraordinary privilege upon one class of persons who might be called upon to perform the same service of others not entitled to any such benefits.

The facts under consideration are an illustration. There were nine carriers and three clerks employed in the post-office at Salt Lake City. No other conclusion can be reached than that these carriers when not on regular duty in part performed the clerical work of the office. Their hours of service during the day probably did not exceed those of the clerks; while they were on their routes their salaries were being earned the same as those of the clerks who were performing their duties in the office. It certainly would be a very unjust discrimination against the clerical force to allow extra compensation to the carriers and withhold it from the clerks who performed the same kind of service.

In one case the clerk earns his salary only by working the full number of hours required in the performance of his regular duties. In the other, the carrier earns his salary (as the court has found) by seven hours of service in

a day and then the extraordinary privilege is extended of working by the hour *at any kind* of service in the office at a fixed rate of compensation.

It was not in consequence of extra service performed in the office that Congress was persuaded to extend this relief to letter-carriers. It had under consideration the exposures and risks incident to their regular service, and it was no doubt considered that notwithstanding all these unfavorable conditions affecting the health and safety of the carrier, his duties were regularly required of him; and although the weather might be inclement and the risks to health and safety great, yet the letter-carrier would be compelled to perform his daily routine of service.

The *character* of the service controlled Congress in affording this relief. If it was contemplated that a letter-carrier could earn his salary by a service of eight hours in a day inside the office, with compensation for extra service, all of which is denied the clerical force performing the same duties, in many instances at a much less salary, it follows, that the act of 1888 is not only unreasonable but the most repugnant to justice and fair dealing of any law upon the statute books. Where is the reason or justice for paying one person more for performing a stated service than another, and at the same time giving one the benefit of eight hours for a day with compensation for extra service and refusing the same compensation, limit of hours, and extra pay to another?

If the character of the service had nothing to do with the matter then Congress intended just the results suggested, and which inevitably follow a liberal construction of the statute.

Independent of these consequences, which we insist warrant the conclusion that Congress did not intend relief except for a particular character of service, reference is made to the report of the Committee on the Post-Office and Post-Roads, Fifty-second Congress, first session, No. 1725, and herewith submitted, wherein the reasons for the statute which we are considering are very briefly stated and comprehended. The committee proceeds to say:

> The present salary of the letter-carrier is not commensurate with the importance, the arduousness, and risks of his business. * * * The carriers average nine hours' work a day for seven days in the week. *They are exposed to all kinds of weather, and to the risks attending not only the frequent travel through the most miserable and most dangerous sections of large cities, but the regular patrolling the thoroughfares of great business centers.* Their business is important, their hours of work are long, their work is hard, and the risks of their business are many.
>
> It takes a good man to do such work well and they should get a good man's salary.

This report, it seems to us, conclusively establishes our contention, that Congress had in mind but one kind of service when it passed this statute. This intention is as clear as language can make it. If there are any doubts about the meaning of the term "employed" they certainly are dispelled, not only by the logic of all precedents where a statute like this has been construed, but by the plain and unequivocal language used in expressing the purpose and intent of the lawmaking power. That this report may properly be referred to as furnishing evidence of the legislative intent, reference is made to the following au-

thorities: *Blake* vs. *National Bank* (23 Wall., 307); *United States* vs. *Steever* (113 U. S., 747); *Holy Trinity Church* vs. *The United States* (143 U. S., 457, 464, 465).

It is therefore contended that the act of 1888, in so far as the same changes the manner of compensation, also has relation to the character of the service required in order to sustain a claim for extra compensation. Within the limit of eight hours all carriers stand upon an equality. They earn their salary, even though they perform no labor, provided they are ready to perform service and none is required. If it should so happen that a carrier was not called upon during the day to perform his regular duties, he might possibly be engaged in other labor, but he would only earn his salary while performing it, precisely the same as though no service had been required. When, however, the claim for extra compensation is made it is incumbent upon him to show, not that he may have earned his salary for the day in either manner suggested, but that he has performed eight hours of actual service in the line of his regular duties and that the extra time claimed for is of the same character.

Our contention is not a device to brush aside the provisions of this statute. We seek only to have such a construction of its terms as reason and fairness dictate. There is no escape from appellant's liability to pay for all proper and legitimate extra service, but justice to the Government and a sense of fair dealing demands that the object of the statute should not be so subverted as to create a privileged class among persons who may be called upon to perform the same character of service. There is no special reason why a person dressed in the garb of a

letter-carrier should be accorded the distinction claimed, because in the event of his not having any regular duties to perform he may have been called upon to perform possibly the janitor or clerical work of the office.

The statute can not be so construed as affording an opportunity for extra jobs or the assignment of a carrier to some favored position in the office with all these extraordinary privileges. When he performs eight hours of carrier's duties in a day (the service which he engaged to perform) he then becomes entitled to extra compensation, provided he performs the same duties in excess of that time. And it is submitted that until he complies with this sole purpose of his employment, he is no more entitled to compensation for extra service than a clerk would be who performed the duties assigned to him for a day and afterwards performed service for another.

Let us consider the unjust consequences of appellee's contention.

A carrier may be assigned for an indefinite period to perform the service of one, who, under the classification of persons in the office, would be entitled to receive but $500 a year salary, and with no limit of hours entering into a day's work, while the carrier's salary is $1,000 a year. Both work twelve hours a day, the one receives $500 for the year's service, while the other obtains $1,500. Is it believed that Congress intended these unjust results? Is it not reasonable to presume that when eight hours were made a day's work it was intended that the service required to earn the salary should be something more than the subordinate work of the office. Is it believed that for the same rate of compensation it was intended

that the extra service should be of any different character than the regular day's service?

A fair and reasonable construction of the statute will remove the possibility of these results, and limit a recovery for only such services as from their character and the demands of the public service were contemplated of a letter-carrier when his office was created.

The court has found that the appellee worked but seven hours a day in the performance of his duties connected with the delivery and collection of mail matter, and that the one hour of service making the maximum of eight hours for a day *was extra service* contemplated by the statute.

This conclusion, as a matter of course, logically follows our contention that, in considering the eight hours of service necessarily required as a foundation for extra labor, that only carrier's duties should be considered; but, as applied in this case, that the extra hours found were within the scope of such employment, it follows conclusively that in this particular there was error, and that this hour can not be considered extra service.

The decision of this case in favor of the appellee will be serious in its consequences to the Government and involves the expenditure of a very large sum of money. It will open the door by which, under the pretext of necessity, large claims will annually be filed for services which should have been performed by others at a greatly reduced rate of compensation. It will encourage a disposition to perform extra service at the expense of a proper administration of a carriers' regular duties. It

will encourage favoritism, and create a privileged class among persons performing service in the office. It will produce insubordination, prevent harmonious action among the employés of the office, and in many ways become a detriment to the public service.

While a strict construction of the statute will secure to every person entitled by reason of the character of the service full compensation for every hour of service diligently performed in the line of his regular duties, it seems to us that every consideration demands that the act of May 24, 1888, should be so construed as to allow a carrier to recover extra compensation only for the performance of his regular duties.

Respectfully submitted.

HENRY M. FOOTE,
Assistant Attorney.

APPENDIX.

[House Report No. 1725, Fifty-second Congress, first session.]

PAY OF LETTER-CARRIERS.

Mr. Dunphy, from the Committee on the Post-Office and Post-Roads, submitted the following report, to accompany H. R. 291:

The Committee on the Post-Office and Post-Roads, to whom was referred the bill (H. R. 291) to increase and equalize the pay of letter-carriers, submit the following report:

The act under which the free-delivery system was inaugurated was passed March 3, 1863. The system was inaugurated July 1, 1863, with 685 carriers, and at a cost of $317,061.20. Under the act of March, 1863, a letter-carrier's salary could not exceed $800 a year, unless in a city where the free-delivery system was operated at a profit; in such a city the postmaster might, upon proof of the diligence, fidelity, and experience of a carrier, increase his salary to $1,000 a year.

The act of February 21, 1879, amended the act of March 3, 1863, and provided that in all cities of more than 75,000 population there should be two classes of letter-carriers. The salary of carriers of the first class was made $1,000 a year, and the salary of the carriers of the

second class was made $800 a year. In all cities of a population under 75,000 there should be one class of carriers, with a salary of $850 a year.

The act of August 2, 1882, provided that upon the recommendation of the postmaster of any city, the Postmaster-General might establish a third grade of letter-carriers, known as auxiliaries, who should be paid at the rate of $600 a year, and who might be employed at any letter-carrier's office.

The act of January, 1887, and the existing law, provides for three classes of letter-carriers in cities of more than 75,000 population, with salaries respectively at $1,000, $800, and $600 a year, and for two classes of carriers in cities of a population under 75,000, with salaries respectively at $850 and $600 a year.

The bill accompanying this report provides that after June 1, 1893, the pay of letter-carriers in all cities where free delivery has been or may be established shall be, for the first year, $600; for the second year, $800; for the third year, $1,000; and for the fourth year and thereafter, $1,200.

The estimated cost per annum of this proposed change in the salary of letter-carriers is $1,657,950.

The committee amends the bill by inserting after the word "that" in line 3 the words "after June 30, 1893," and recommends that the bill as amended do pass.

Some of the reasons for the recommendation, very briefly stated, are these:

(1) For seventeen years the free-delivery system has been self-sustaining. Since June 30, 1875, the profits of that system have been about $21,000,000, an average annual profit of about $1,235,000.

The following table will show the growth of the free-delivery system from its inauguration, July 1, 1863:

Year.	No. of offices.	No. of carriers.	Cost of service.	Postage on local matter.	Excess of cost.	Excess of postage on local matter.
1863-'64..	66	685	$317,063.20	.....	.....	.....
1864-'65..	45	757	448,664.51	.....	.....	.....
1865-'66..	46	863	589,236.41	.....	.....	.....
1866-'67..	47	943	699,934.34	.....	.....	.....
1867-'68..	48	1,198	995,934.59	.....	.....	.....
1868-'69..	48	1,246	1,183,915.21	.....	.....	.....
1869-'70..	55	1,362	1,230,079.85	$681,864.70	$548,215.15	.....
1870-'71..	52	1,419	1,353,923.23	758,120.78	595,802.45	.....
1871-'72..	52	1,443	1,385,965.76	907,351.93	478,613.83	.....
1872-'73..	52	1,498	1,422,495.48	1,112,251.21	310,244.27	.....
1873-'74..	87	2,049	1,802,696.41	1,611,481.66	191,214.75	.....
1874-'75..	87	2,049	1,802,696.41	1,947,599.54	.....	$67,517.52
1875-'76..	87	2,269	1,981,186.51	2,065,561.73	.....	84,375.28
1876-'77..	87	2,265	1,893,619.85	2,254,597.83	.....	360,977.95
1877-'78..	87	2,275	1,824,166.90	2,452,251.51	.....	628,084.55
1878-'79..	88	2,359	1,947,706.61	2,812,523.86	.....	864,771.14
1879-'80..	104	2,688	2,363,693.14	3,068,797.14	.....	705,104.00
1880-'81..	109	2,861	2,499,911.54	3,273,630.39	.....	773,718.85
1881-'82..	112	3,115	2,623,262.74	3,816,576.09	.....	1,193,313.35
1882-'83..	154	3,680	3,173,336.51	4,195,230.52	.....	1,021,891.01
1883-'84..	159	3,890	3,504,206.52	4,778,484.87	.....	1,274,278.35
1884-'85..	178	4,358	3,985,952.55	5,281,721.10	.....	1,295,768.55
1885-'86..	181	4,841	4,312,306.70	5,839,242.97	.....	1,526,936.27
1886-'87..	189	5,310	4,618,692.07	6,691,253.69	.....	2,072,561.62
1887-'88..	358	6,346	5,422,356.36	7,721,689.16	.....	2,299,332.80
1888-'89..	401	8,257	6,957,941.90	9,536,921.82	.....	2,578,979.92
1889-'90..	454	9,066	7,976,202.72	10,184,764.42	.....	2,208,561.70
1890-'91..	519	10,130	9,072,160.31	11,174,754.38	.....	2,102,594.07

The actual profits of the free-delivery system for the year ending June 30, 1891, were $2,102,594.07, nearly half a million dollars more than the estimated cost of the change in salaries proposed by the accompanying bill.

The Post-Office Department is now nearly self-sustaining. With the regular enormous annual increase in its revenue that Department will soon become a certain and permanent source of income to the Government. The letter-carriers and the postal clerks, hard-worked and poorly-paid employés of the Government, deserve considerable of the credit for the present admirable condition of the Post-Office Department, and our committee believes in allowing them to enjoy a little of the fruits of their good behavior, their industry, and their faithful service.

(2) The present salary of the letter-carrier is not commensurate with the importance, the arduousness, and the risks of his business.

The carriers are employed only in cities, where, it will be generally admitted, the cost of living is greatest. Their outfit costs about $75 a year. In a very great majority of cases they are married and have families. The postmasters expect the carriers to keep themselves neatly clad in uniform, and the Government expects them to maintain and educate their families.

The carriers average nine hours work a day for seven days in the week. They are exposed to all kinds of weather, and to the risks attending not only the frequent travel through the most miserable and most dangerous sections of large cities, but the regular patrolling the thoroughfares of great business centers.

Their business is important, their hours of work are long; their work is hard, and the risks of their business are many.

It takes a good man to do such work well and they should get a good man's salary.

(3) The system would be benefited by the proposed change.

Under the existing law the salary of the carrier begins at $600 a year, and can never reach a point beyond $1,000 a year.

Under the proposed change a beginner would have before him the certainty of reaching $100 a month, provided he rendered faithful service, and the certainty of retaining that fair salary during good behavior.

The proposed highest salary would be worth working for, and it would be a very great inducement to good men to enter the service and remain there.

Your committee recommend that the bill as amended do pass.

148 U.S. 14

JAN 25 1893
JAMES H. McKENNEY,
CLERK

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

No. 1061.

THE UNITED STATES, Appellant,

vs.

AARON S. POST.

BRIEF FOR APPELLEE.

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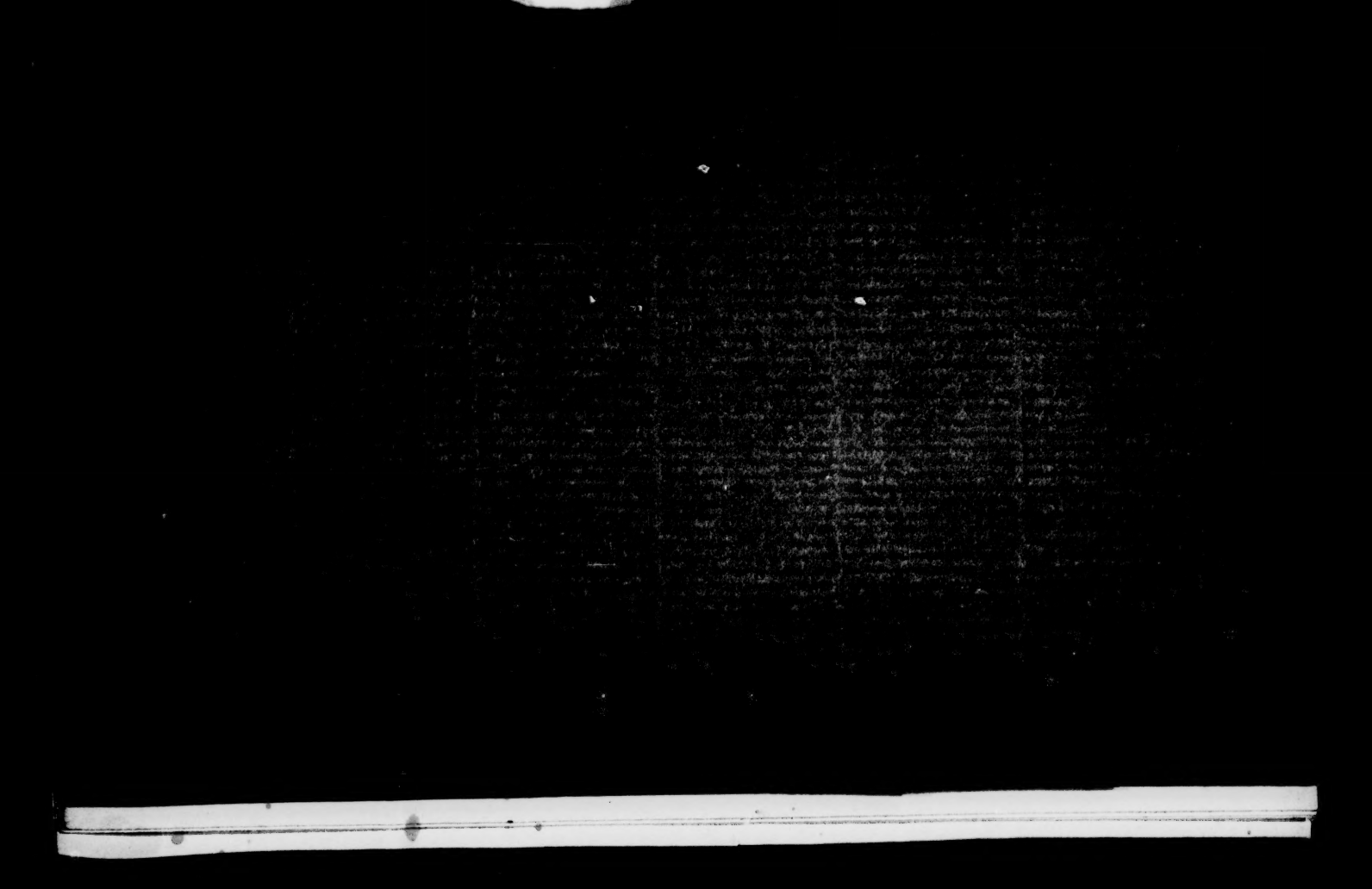

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1892.

THE UNITED STATES, Appellant,
v.
AARON S. POST. } No. 1061.

BRIEF FOR APPELLEE.

1. Statement of the Case.

The claimant, Aaron S. Post, by his original petition, filed in the Court of Claims March 26, 1891 (Record, p. 1), and his amended petition, filed January 11, 1892 (p. 1), made claim against the United States for extra pay as a letter-carrier at Salt Lake City, in the Territory of Utah, for time during which he was employed in his duties in excess of eight hours a day. The claim was based on the act of May 24, 1888, 1 Supplement to the Revised Statutes of the United States, second edition, page 587, as follows:

"An act to limit the hours that letter-carriers in cities shall be employed per day.

"*Be it enacted, etc.*, That hereafter eight hours shall constitute a day's work for letter-carriers in cities or postal districts connected therewith, for which they shall receive the same pay as is now paid as for a day's work of a greater number of hours.

"If any letter-carrier is employed a greater number of hours per day than eight, he shall be paid extra for the same in proportion to the salary now fixed by law."

The claimant was, from the date of this act, May 24, 1888, to December 31, 1889, a letter-carrier of the second class at the post-office at Salt Lake City, Utah (Finding I, p. 2). As such, he was, by the act of January 3, 1887, § 3 (1 Supp. Rev. Stat. 2d Ed. pp. 518, 519), entitled to a salary of $850 a year. During his term of service he was employed in the performance of his duties more than eight hours a day (Finding II, p. 3). The manner, time and nature of the employment of the carriers at Salt Lake City, was generally as follows:

They were required to report for duty at the post-office at 7 a. m.

From 7 to 7.30 they were employed within the post-office in the distribution of mail matter; that is to say, in taking letters and papers from newly-arrived pouches, assorting them, and placing them in the boxes for box and general delivery.

From 7.30 to 8 they were severally engaged in arranging their own mail matter for carrier delivery by streets and numbers, and where the residence of a person was not expressed in the direction of a letter and was not known or remembered, in looking it up in the directory.

From 8 to 11 they were occupied on their routes in delivering and collecting mail matter.

From 11 to 11.30 they were engaged within the post-office building in making returns of persons not found, and other things connected with their route delivery.

From 11.30 to 1 they were employed within the post-office in the general distribution of mail matter.

From 1 to 2 they were absent and off duty.

From 2 to 3.30 they were again employed on the post-office work of distributing general mail matter.

From 3.30 to 4 they were severally engaged in arranging their own mail matter for delivery.

From 4 to 6 they were again occupied on their routes in delivering and collecting mail matter and in making their returns.

From 6 to 7 they were again absent and off duty.

From 7 to 8 they were again employed on the post-office work of distributing general mail matter.

The above statement represents an ordinary or average day's employment. The time of going out and the time of being out on the routes in fact varied with the size of the mail, as did the time of their being relieved from duty at night. But their reporting for duty at 7 in the morning, at 2 in the afternoon, and at 7 in the evening was constant.

The above statement does not apply to Sundays. On Sundays the carriers made no deliveries. They were employed, however, in the office, but the time of employment did not exceed eight hours.

During the time covered by this claim there were 9 carriers and 3 clerks employed in said post-office (Finding III, p. 3).

The carriers, by one of their number, remonstrated against the performance of work not connected with their duties as carriers. The postmaster, however, held that "under the regulations the postmaster could use them in that service." He therefore required them to perform it (Finding IV, p. 3).

As to this claimant, Post, the court finds that the particulars of his employment in excess of eight hours per day, all of which were performed by order of the postmaster, were as follows:

Before 7 A. M. the regular hour when the carriers reported for duty, he arrived at the office and opened the

eastern mail, which came at about 5 in the morning, in order to prepare the same for the southern mail. This was done so that it would not have to lie over twenty-four hours. The time thus employed was two hundred and forty-six and one-half hours.

During intervals between 7 A. M. when carriers reported for duty, and 6 P. M. when their work as carriers ended, he was employed in the office in opening the mail, stamping it, and distributing the same as hereinbefore stated in excess of eight hours, nine hundred and eighty-six hours.

After his last trip and his returns as carrier were made—*i. e.* after 7 P. M.—he was employed on the post-office work of distributing general mail matter in the office four hundred and ninety-three hours (Finding VI, p. 5).

Certain regulations of the Post Office Department in force at the time were found as facts by the Court of Claims (Finding V, p. 4). So far as material they may be summarized as follows:

Postmasters are charged with the duty of supervising their carrier service and "are specially enjoined to see that the carriers connected with this service are fully informed as to their responsibilities and duties." They are also "to frequently visit the stations and see that the regulations are there observed and proper order and discipline maintained"; "to issue all necessary orders and instructions necessary to carry out the regulations and promote the efficiency of the service"; "to reprimand the carriers for irregularities or report them for removal," "as the nature of the offense may require." "The due performance of their duties by carriers and the observance of law, regulations, and orders prescribed for their conduct, will be enforced by reprimand for slight offenses; by suspension with loss of pay for more serious ones, not, however, to exceed thirty days; and by suspension and recommendation for removal for gross offenses or persistent disre-

gard of the rules herein prescribed, or of the orders of the postmaster not inconsistent herewith."

The regulations further define the duties of carriers, and, among others, contain the following provision: "Carriers shall be employed in the delivery and collection of mail matter, and during the intervals between their trips may be employed in the post-office in such manner as the postmaster may direct, but not as clerks."

The regulations further require that the mails must be assorted and the carriers started on their first daily trip as early as practicable, and prescribe the mode of delivery of mail. Carriers are to search the city directory, where one is published, to ascertain addresses (Finding V, p. 4, 5).

Upon these findings of fact, the court held (Conclusion of Law, p. 5) that the claimant was entitled to recover extra pay for 1,725½ hours, including all the work he had done, whether in or out of the post-office, at the rate of 29.1 cents an hour, being a proportionate part of his salary of $850 a year.

It therefore granted him judgment (p. 12) for $502.12.

From that judgment the United States appealed (p. 12).

II. Brief of Argument.

1. Statement of the Question.

As the statute under which this suit is brought is express in its mandate that letter-carriers shall be paid proportionate extra pay for all work performed by them in excess of eight hours a day, and as the finding of the court is that the present claimant did perform extra work, his compensation for which, at the rate of his salary would amount to the sum for which judgment was given him, there is a clear *prima facie* case for the application of the statute by an allowance of extra compensation.

The only defense is that a portion of the service for which the extra compensation is claimed was performed within the walls of the post-office, and was such as is perhaps more regularly that of clerks. From this it is argued that the service not being strictly appropriate to a carrier, it could not have been within the contemplation of Congress to allow extra pay for the same. In connection with this proposition the regulations are referred to, and it is claimed that they, in terms, prohibited the employment of carriers as clerks. The court below, in its elaborate opinion by Judge Nott, rested its judgment in favor of the claimant upon the following propositions (p. 8).

1. That the carriers were clearly entitled to recover, not only for all work done on the streets in the collection and delivery of mail matter, but also for all work done in the post-office in receiving and arranging the letters of their routes.

2. That as to the distribution of mail matter for the bags and the general delivery during the times of the day which intervened between one trip and another in the same day, the regulation of the Department was open to a construction permitting such services, and they were, therefore, entitled to be allowed for that.

3. That, as to services of the same character, rendered after the termination of the last trip, the case is not so clear, but that as "the necessities of the situation were great, the good faith of the postmaster is undisputed and the equities of the case are so strongly in favor of the carriers," doubts should be resolved in their favor.

2. Previous Eight-hour Legislation.

The intent and purpose of the letter-carriers' eight-hour law of May 24, 1888, can not be fully or adequately stated, or its proper construction arrived at, without a

reference to the previous and subsequent eight-hour legislation of Congress. The original eight-hour law was enacted June 25, 1868 (15 Stat. 77). It is now embodied in Section 3738 of the Revised Statutes, as follows:

"Eight hours shall constitute a day's work for all laborers, workmen and mechanics who may be employed by or on behalf of the Government of the United States."

This act, it will be perceived, contains no provisions for its execution and prescribes no standard or rate of pay for work performed in excess of eight hours. Almost from the moment of the enactment of this act, complaints of the disregard of its provisions by the officers of the Government charged with its execution, arose in great numbers. In *United States* v. *Martin*, 94 U. S. 400, the act came before this court for construction on a claim by a workman, who had, previous to the passage of the act, been employed for twelve hours a day, and who had continued to work, after its passage, the same number of hours a day. He claimed extra pay on the ground that the act, in fixing eight hours as the length of a laborer's day, by implication entitled him to additional pay, *pro rata*, if he was employed a greater number of hours. It was held, however, that as the act was silent as to the sum to be paid for the labor of eight hours and did not provide that the price should be more when the hours were greater, or less when the hours were fewer, it must be construed as merely in the nature of a direction from a principal to his agent that eight hours is deemed to be a proper length of time for a day's labor, and that his contracts shall be based upon that theory. This view was reaffirmed in *United States* v. *Driscoll*, 96 U. S. 421.

These cases sufficiently show the entire inability of those for whose benefit the eight-hour legislation was enacted, to enforce its provisions through the instrument-

ality of the courts. It left them wholly and completely at the mercy of their superior officers.

By the act of March 30, 1888, 1 Supp. Rev. Stat. 2d Ed. p. 582, "The Public Printer is hereby directed to rigidly enforce the provisions of the eight-hour law in the Department under his charge"; but this act does not, any more than the former legislation, provide any means for its enforcement, or give any extra pay in case of its violation. That act is itself a confession that the existing eight-hour law was not then enforced.

In striking contrast to this old eight-hour law, thus proved to be so devoid of force, the present act of 1888 was enacted. By its first clause, which is, in this respect, almost a transcript of the old eight-hour law of 1868, it provides:

"That hereafter eight hours shall constitute a day's work for letter-carriers in cities or postal districts connected therewith."

Had it stopped here, the construction of it would, unquestionably, have been identical with that put upon the old eight-hour law by this court in *United States* v. *Martin*, just cited. It would have been held to be merely in the nature of a direction from a principal to his agent, that eight hours is deemed to be a proper length of time for a day's labor. Undoubtedly, even as it stands it is that, and must be held to be in the nature of a direction to the Post Office Department not to employ carriers for more than eight hours. Had the clause stood alone, it might even have been claimed to permit a reduction of salaries on account of the reduction of hours of service. To avoid the possibility of any such construction, however, the next clause of the act, completing its first sentence, reads:

"For which they shall receive the same pay as is now paid as for a day's work of a greater number of hours."

This effectually secures to them the entire salary allowed by the law and prevents any reduction on account of the reduction of hours of work.

But, had the act stopped here, it would still have failed of accomplishing certain and complete relief.

Postmasters could still have pleaded insufficient force in their offices, and unusual pressure of business, as excuses for overworking their carrier force, and, as the law would have been silent on the question of extra compensation, none could have been allowed them, notwithstanding the direction that their hours of service should be limited to eight. Contemplating, however, a possible disregard of its provisions by the postal authorities, it proceeded to enact in its concluding clause:

"If any letter-carrier *is* employed a greater number of hours per day than eight, he shall be paid extra for the same in proportion to the salary now fixed by law."

The intent of this provision is clear and unmistakable. It makes the act absolutely self-executing. It secures to the carrier, without the possibility of evasion or reservation, payment for every moment of extra labor performed by him in excess of the legal limit of his service. To hold in favor of the Government on this point, would be to deprive the statute of this self-executing character. To allow the postal authorities to employ carriers on extra work and then evade the clear terms of the statute by alleging that it was done contrary to the regulations of the Department, would be to put the carriers again where they were prior to the act—at the mercy of their superior officers. Such a result was manifestly never contemplated by the framers of the law.

3. The Eight-hour Law of 1892.

Since the passage of the act of 1888, which we are now considering, and since the decision of the Court of Claims in this very case, legislation on the subject of eight hours has gone even further, giving a striking confirmation to the correctness of the view which we have submitted as to the interpretation of this act. We refer to the act of August 1, 1892, entitled "An act relating to the limitation of the hours of daily service of laborers and mechanics employed upon the public works of the United States and of the District of Columbia" (27 Stat. 340). It is as follows:

"*Be it enacted, etc.*, That the service and employment of all laborers and mechanics who are now or may hereafter be employed by the Government of the United States, by the District of Columbia, or by any contractor or subcontractor upon any of the public works of the United States or of the said District of Columbia, is hereby limited and restricted to eight hours in any one calendar day, and it shall be unlawful for any officer of the United States Government or of the District of Columbia or any such contractor or subcontractor whose duty it shall be to employ, direct, or control the services of such laborers or mechanics to require or permit any such laborer or mechanic to work more than eight hours in any calendar day except in case of extraordinary emergency.

"SEC. 2. That any officer or agent of the Government of the United States or of the District of Columbia, or any contractor or subcontractor whose duty it shall be to employ, direct, or control any laborer or mechanic employed upon any of the public works of the United States or of the District of Columbia who shall intentionally violate any provision of this act, shall be deemed guilty of a misdemeanor, and for each and every such offense shall, upon conviction, be punished by a fine not to exceed one thousand dollars, or by imprisonment for not more than six months, or by both such fine and imprisonment, in the discretion of the court having jurisdiction thereof.

"SEC. 3. The provisions of this act shall not be so construed as to in any manner apply to or affect contractors or subcontractors, or to limit the hours of daily service of laborers or mechanics engaged upon the public works of the United States or of the District of Columbia for which contracts have been entered into prior to the passage of this act."

Nothing could more clearly mark the legislative indignation at the shifts and devices from time to time employed in the unworthy attempt to evade the operation of the legislative policy of eight hours for a day's work. The reports of the committees of Congress are full of evidence of such violations. In a report by Senator Carey from the Committee on Education and Labor (Senate Report No. 245, 52d Congress, 1st session), it is said, referring to the act of 1868:

"Notwithstanding this clear and explicit law, those who acted on behalf of the Government, in many cases, failed to acknowledge its provisions, and laborers, workmen and mechanics were compelled to labor for ten hours, and for the same compensation as if they had been required to labor for eight hours only. The law in some instances was observed, but as a rule was disregarded."

In another report by the same Senator (Senate Report No. 948, 52d Congress, 1st session), on the bill which afterwards became the act of August 1, 1892, just cited, it is said:

"It is claimed by the labor organizations of the country, and by individual laborers, workmen and mechanics that have from time to time been employed on behalf of the Government of the United States, that the violation of the eight-hour law by the officers of the United States has been quite as common as its enforcement; that in many instances those employed by the Government have been compelled to work ten hours a day, and have been paid the same compensation as those who were only required

to labor eight hours a day on similar work. The debates that took place in the two branches of Congress show that it was the intention of Congress that the law should be effective."

It was added with reference to the bill thereby recommended and which was passed—

"The bill under consideration, it is believed, contains provisions which will compel its enforcement."

The report in the House by Mr. Tarsney, from the Committee on Labor (House Report No. 427, 52d Congress, 1st session), contains the following striking allegations:

"The official record of the proceedings of Congress since the passage of the said act of June 25, 1868, and the reports of the Committee on Labor in the Fiftieth and Fifty-first Congresses contain substantial and ample evidence, consisting of executive proclamations and orders, communications and orders from the heads of Departments, judicial proceedings in the Supreme Court of the United States, and depositions and affidavits of citizens, showing conclusively an almost universal evasion and disregard of the statute covering the period from its enactment down to the year 1884.

"Your committee have no official data or evidence showing the enforcement or non-enforcement of this statute at the present time, or since 1884, but information entitled to much weight (based, however, upon hearsay) has been furnished your committee that said law is now very generally evaded, disregarded and annulled."

Their recommendations as to the remedy are shown by the following further extracts from their report:

"Your committee is of the opinion that while this statute in its letter was a mere naked declaration of a principle its spirit and intent was to fix a rule for the limitation of the daily hours of service of the labor en-

gaged in the service of the Government, and its failure to accomplish this purpose, if such failure there has been, may be attributed to the absence from the act of the necessary provisions to secure the enforcement and observance of the declared principle and not to any ambiguity as to the intent of Congress.

"Your committee are unanimous in the opinion that this law should be strictly observed in accordance with its spirit and the intent of the Congress that enacted it, and if the same is evaded and disregarded because of the lack of proper provisions of law to secure its enforcement, such provisions should be at once supplied, unless such observance and enforcement is impracticable and would produce evils which would outweigh in their results the benefits intended to be secured by its enactment, in which case it should be repealed." (House Report No. 427, 52d Congress, 1st Session.

These recommendations were followed by the enactment of the act, August 1, 1892.

It is not claimed that that act in terms has any application to the service of letter-carriers, who are not "laborers" or "mechanics" within any proper definition of those terms, but whose service is, more properly speaking, intellectual and clerical in character. But the act is of the highest value to our argument as the severest possible legislative criticism and condemnation of the discreditable devices by which it has been, unfortunately, but too well established that the eight-hour legislation can be and has been evaded.

According to the construction insisted upon herein on behalf of the United States, any officer of the United States or contractor on public works might, with impunity, require any laborer or mechanic to work his full eight hours at his usual labor, and then place him upon clerical service for any additional number of hours. Manifestly, such a construction would defeat the whole object of the act of 1892; but is it not equally apparent

that a similar construction would defeat that of the act of 1888? The only difference between the two is in the consequence flowing from extra work. When the laborer or mechanic works more than eight hours, the act of 1892 makes the officer imposing the extra work criminally responsible. When the letter-carrier works more than eight hours, the act of 1888 makes the Government civilly responsible. But the test in each case is extra labor or employment—not its character. And it would be strange if a statute imposing civil liability only were to receive a stricter construction than could be applied to a criminal statute.

In a recent opinion on the act of August 1, 1892, published in General Orders No. 61, Headquarters of the Army, 1892, the Attorney-General says, with reference to the old eight-hour law of 1868, now constituting Section 3738 of the Revised Statutes:

"In practical administration, however, this section has been held to be merely directory, and *has not been enforced.*"

And again—

"It is matter of public history, that, ever since the enactment of the statute of 1868, efforts have been made to procure legislation from Congress imperatively requiring the enforcement of that act."

The official reports and opinions which we have cited are valuable as guides to the ascertainment of the meaning and intent of Congress in the enactment of the statutes in question. Courts, in construing a statute, may, with propriety, recur to the history of the times when it was passed, and will take judicial notice of generally known facts of public interest connected with the subject-matter of the legislation. *United States* v. *Union Pacific Railroad Company*, 91 U. S. 72, 79; *Chinese Exclusion*

Case, 130 U. S. 581. So, too, reports of Committees of Congress and proceedings of either House may properly be referred to as furnishing evidence of the legislative intent. *Blake* v. *National Banks*, 23 Wall. 307; *United States* v. *Steever*, 113 U. S. 747; *Holy Trinity Church* v. *United States*, 143 U. S. 457, 464, 465.

This overwhelming evidence of the disregard of a law by those charged with its enforcement indicates the construction to be placed upon subsequent enactments *in pari materia*. The remedy must be co-extensive with the mischief. Devices for evasion must be brushed aside, and the legislative will must be given its full operation. When, in face of the fact that in 1888 it was enacted that "*Eight* hours shall constitute a day's work for letter-carriers," it can be possible for a committee of Congress, in 1892, officially to put on record that "The carriers average *nine* hours' work a day for seven days in the week" (House Report 1725, 52d Congress, 1st sess.), it would seem that the courts should be astute to find some remedy in the law for a condition of things so opposed to the will of the people, as declared by their national legislature.

4. The Regulation of the Department.

The doubts that were thrown over this question in the argument on behalf of the Government when the case was before the Court of Claims, and which seem to have, to some extent, impressed the court, appear from the following sentence of the opinion (p. 8):

"We agree with the counsel for the defendants that the eight-hour law was not intended as a door of evasion whereby a postmaster could bring into his office additional clerks to do work for additional pay, but the question is doubtful, the necessities of the situation were great, the good faith of the postmaster is undisputed, and the equities of the case are so strongly in favor of the car-

riers that we deem it only just to resolve doubts in favor of the claimants, who have no right of appeal, leaving it to the Supreme Court to correct the error, if error it be."

But it would have been more to the point to have suggested that the law was not intended as a "door of evasion," whereby letter-carriers could, for years, be compelled, against their objection and protest, to work excessive hours, and then be deprived of their statutory compensation on the ground that the work ought not to have been required of them. To so hold would be to hold that the very condition under which the statute says that they *shall* have extra pay is to be the condition of their *not* having it; for the act plainly intends that *no* work of *any* character shall be required in excess of eight hours, and only tolerates the exaction of it upon payment of a proportionate extra compensation.

The doubts of the court seem to have been founded on the regulation of the Department (Finding V, Sec. 647, p. 4) that—

"Carriers shall be employed in the delivery and collection of mail matter, and during the intervals between their trips may be employed in the post-office in such manner as the postmaster may direct, but not as clerks."

Approaching the question, as the learned court below appears to have done, from the standpoint of the Departmental regulations, it is not surprising that it should have been led into some little doubt as to the powers of the postmaster to exact the service in question and the right of the carriers to perform it and claim pay for it.

It is apparent from the report of the case in 27 C. Cls. 244, as well as from the opinion of the Court of Claims, that the main reliance of the Government in that court

was upon the regulations prohibiting the employment of carriers as clerks.

But the question before the court was not one of interpretation of the regulation, but of the act. If the law gives the extra pay, Departmental regulations are powerless to take it away.

The court appears to have looked upon the act of 1888 as in some sort an act intended to define the powers of the postmaster, or as giving the postmaster power to employ the carriers for additional time in certain specified and defined service. But the act, upon its face, as well as the whole tenor of the eight-hour legislation, is conclusive that that legislation was exclusively for the benefit of the carriers, and not specially intended either to enlarge or restrain the powers of the Post Office Department or any of its officers. It is true, in a general way and as the ordinary and usual policy, that it restricts those officers from exacting service from carriers for more than eight hours a day; but in its further provision, that they shall receive the same pay for the eight hours that they have been previously receiving for a greater number, and still more in the concluding grant of extra pay for extra work, is clearly displayed the legislative intent of benefit for the carriers and for them alone, in the enactment of the law. Had the court thus approached the case from the standpoint of the act, that of restriction of the labor of the carriers coupled with an increase of pay in case of extra work, its doubts would have disappeared and it would have seen a clear case for the benefit of the act.

The regulation of the Post Office Department, relied upon, is, at most, directory only. Even if in contravention of its terms, the postmaster should employ his carriers as clerks, is that unlawful or improper? Does any statute say that the carriers shall not be employed on

clerical service? On the contrary, there is a statute expressly authorizing it, as will be shown later on in this brief. The regulations in this respect are addressed by the Postmaster-General, not to the carriers, but to the postmasters. The postmasters are enjoined to supervise their carrier service and to see that the carriers are fully informed as to their responsibilities and duties. They are vested with power to issue all necessary orders and instructions to carry out the regulations and promote the efficiency of the service. Thus great powers are conferred upon the postmaster, and he is made the judge of the service to be exacted of each carrier. For each carrier to undertake to interpret the regulations for himself, to do or refuse to do the work assigned him by the postmaster, on the ground that it is or is not such service as is required of him by the postal regulations, would produce infinite confusion in the affairs of the postal service and would effectually annihilate the discipline and subordination which are absolutely requisite to the safe working of this vast branch of the machinery of Government. It was, therefore, for the postmaster and the postmaster alone to enforce the regulations, subject to correction by the Post Office Department. It was for him alone to decide what was the service "as clerks" contemplated by the regulation. Obviously, not every service performed within the walls of the post-office was regarded as service "as clerks," for the regulation, in terms, allows service in the post-office. It might indeed be difficult to draw the line between service as clerks and that which was not so. The carriers and the postmaster were not in accord on that subject, for it is expressly found that the carriers remonstrated against the performance of work not connected with their duties as carriers. The postmaster held, however, that under the regulations he could use them in that service; he therefore required them to perform it. Thus, the post-

master, the only authority competent, so far as carriers are concerned, to construe the regulations, ruled that the particular service herein shown was not service as clerks. The carriers were bound by that construction and if it was wrong the question was entirely between the Postmaster-General and the postmaster.

The carriers obeyed the orders of their superior officers and looked to the courts to redress their wrongs. They had their choice between obeying orders and the opprobrium of summary dismissal; they lost no legal right by their obedience. The case is analogous to that of a disbursing officer paying money into the Treasury in obedience to orders of his superiors, although he claims it as his own. It is held that he loses no right of action by so doing. *United States* v. *Mosby*, 133 U. S. 273, 279. He may recover under an implied contract. This claimant can recover under the express promise of the statute.

A large part of the work of carriers, under the regulations themselves, is of a clearly clerical nature, such as assorting mail, making schedules of the order of delivery and looking up addresses in the city directory. The Government was certainly no loser by having letter-carriers perform work which, with equal propriety, might have been done by clerks. The salaries of clerks range considerably higher than those of letter-carriers. Act of March 2, 1889, par. 1, 1 Supp. R. S. 2 ed. pp. 679–682.

This court has had occasion, in several cases, to pass upon the legal status of a departmental regulation. In *Morrill* v. *Jones*, 106 U. S. 466, it was held that the Secretary of the Treasury can not, by his regulations, alter or amend a revenue law; all he can do is to regulate the mode of proceeding to carry into effect what Congress has enacted. That was a case where the law provided for the admission, free of duty, of animals specially imported for breeding purposes, under such regulations as

the Secretary of the Treasury might prescribe. The regulation prescribed under this statute provided that the animals to be so admitted must be of superior stock. This was held to place a limitation upon the statute, and to be void for that reason.

Just so here. The law gives extra pay to all letter-carriers employed a greater number of hours per day than eight. The regulation, if construed as insisted upon by the United States, would confine the allowance of extra pay to cases where the employment was not upon clerical duty. This would materially limit the scope of the benefits provided by the regulation of Congress and would render the law a mere mockery.

The ruling in *Morrill* v. *Jones* was followed in *United States* v. *Eaton*, 144 U. S. 677. There it was held that a regulation lawfully prescribed by the head of a Department might so far have the force of law as to support acts done under it, but could not be admitted to have such force of law as to support a criminal prosecution for its violation.

In accordance with these decisions, it was said by the United States District Court for the Southern District of Alabama, "But in my opinion no rule or regulation can become, or have the force of, law. Congress can not, if it would, confer law-making power on the Commissioner or Secretary." *United States* v. *Bedgood*, 49 Fed. Rep. 54, 58.

And the following remarks of the United States Circuit Court for the District of Idaho, have peculiar force in this connection:

"Under this section the validity of all departmental regulations which are appropriate, and within the limitations of the law, can not be doubted. This, however, is not a grant of power to legislate; to add to the law; to render its enforcement difficult; to burden the proceedings under it with unnecessary expense or hardship; or

to incumber them with onerous and technical conditions. It is designed that the permitted regulations shall simplify and explain, not embarrass, the administration of the law; and certainly they must not only be appropriate, but they must be reasonable, and within the limitations and intent of the statute. * * *

"I am unwilling to say that this and all the departmental regulations, regardless of their encroachment upon or variation from the law, and the needless expense, inconvenience, and hardship which they may entail beyond those which would result by following only the provisions of the law itself, shall be literally and technically construed and enforced. Such a rule would not be conducive to the ends of justice. When they must be followed, and when they may be disregarded, may not be easy to define by any general rule; but in all cases they must be appropriate, and within the limitations of the statute in the enforcement of which they are designed to aid, and which they can not supplant. It has frequently been held by the Supreme and other United States courts that regulations in conflict with the law are invalid; those which enlarge its requirements, though not in exact conflict with or contradiction of it, should be likewise regarded. If this rule is not clearly within the former, it is within the latter class." *Anchor* v. *Howe*, 50 Fed. Rep. 367, 368.

It is not at all clear that the departmental regulation ever was intended to limit absolutely the discretion of the postmaster or prevent him in a case of urgency from employing carriers directly as clerks. It was probably only intended for the guidance of the postmaster in a general way. Even a technical contravention of the regulation might, in a given case, be not only overlooked by the Department, but might receive its positive commendation. Even statutes are frequently held to be directory and not mandatory, and acts done in violation of them are upheld where the statute does not, in express terms, make them void. Such is the striking instance of a Na-

tional bank making loans on real estate. Revised Statutes §§ 5136, 5137, prohibit National banks from making loans on real estate, but notwithstanding this, if a bank does make such a loan, the transaction will be upheld and the security enforced. *National Bank* v. *Mathews*, 98 U. S. 621. Many cases are cited in the opinion in which it has been held that even where a statute has been contravened by an agreement or act done, a party who has had the benefit of the agreement or act can not be permitted, in an action founded upon it, to question its validity.

5. Clerical Employment of Carriers Expressly Authorized by Statute.

But the employment of the carriers in any capacity, whether as clerks or otherwise, in or about the post-office, was clearly lawful and regular. The act of March 3, 1885, provides:

"And postmasters are authorized, with the approval of the Postmaster-General, to assign at any time any clerk or employé of their respective post-offices to duty in any branch thereof" (1 Supp. Rev. Stat. 2d ed. p. 483).

The Court of Claims was of opinion (p. 8) that the construction given by the postmaster at Salt Lake City to the regulation defining the duties of letter-carriers was "a construction which was apparently *known to the Department*, and which for the purposes of this case must be regarded as the construction of the Department itself."

Thus the assignment of the carriers to clerical duty was clearly within the competency of the postmaster. And it would ill befit the good faith of the Government, after obtaining the full benefit of the faithful labor of this claimant in the increased promptness and efficiency of its mail service, to deny him the statutory compensa-

tion of that labor on the plea of a purely technical and formal lack of authority.

The construction herein claimed for the act of May 24, 1888, is in accordance with that adopted in England under a statute providing for the punishment of certain acts when committed by any person "employed under the post-office." It was held that these words meant any employment in a post-office, even though gratuitous, and to that extent irregular. *Regina* v. *Reason*, Dearsley, Crown Cases, 226.

6. Prior Statutes Against Extra Pay Immaterial.

Some mention is made in the opinion of the court of Section 1764 of the Revised Statutes, which provides as follows:

"No allowance or compensation shall be made to any officer or clerk, by reason of the discharge of duties which belong to any other officer or clerk in the same or any other department; and no allowance or compensation shall be made for any extra services whatever, which any officer or clerk may be required to perform, unless expressly authorized by law."

It seems singular that this statute should have been introduced into the discussion. Even if it applied to such a case as this, it would be repealed *pro tanto* by the positive provisions of the act of 1888. But it has no application. No claim is here made on behalf of the carriers "by reason of the discharge of duties which belong to any other officer or clerk." The claim arises purely "by reason of" their own work in excess of eight hours a day. If the carriers were here claiming the salary of a clerk or some extra allowance in addition to the proper salary of their own office on account of having done duty of a higher grade, a case would be presented within the prohibition of the statute, such as

was before this court in *Stansbury* v. *United States*, 8 Wall. 33. In that case a clerk in the Department of the Interior had been detailed as an agent to attend and report on the London Industrial Exhibition. He had been paid his full salary as a clerk, but claimed additional pay as agent, under an express promise of the Secretary of the Interior to that effect. It was held, under the provisions of law which afterwards became §1764 of the Revised Statutes, that he was not entitled to the additional pay; and the object of the law was thus stated (p. 37):

"The law was passed to remedy an evil which had existed, of detailing officers with fixed pay to perform duties outside of their regular employment, and paying them for it, when the Government was entitled, without this double pay, to all their services."

This view supports the present claim. The claimant, Post, being in the employ of the United States as a letter-carrier, the Government was entitled to all his services. The act of March 3, 1885, above cited, constituted notice to him that he was liable to assignment to any branch of postal work at his post-office. He was assigned by his superior officer to clerical work. This did not entitle him to the salary of a clerk, and he is not demanding it. He is demanding nothing but the proper salary of his own office. This consisted of two parts:

1. An annual salary of $850, as provided by act of January 3, 1887, Section 3, 1 Supp., R. S. 2d Ed. pp. 518, 519.

2. Extra pay in proportion to the annual salary fixed by law, under the act of May 24, 1888, 1 Supp. R. S. 2d Ed. p. 587, being the act under which this suit is maintained.

Neither the act fixing an annual salary, nor that granting extra compensation, defines the character of the work

on which the carrier must be employed to entitle him to his pay under either act.

There would be as much reason in claiming that he is to be deprived of his annual salary, under the act of 1887, for that portion of his regular eight hours on which he might be employed upon clerical work, as there is in applying that test to his right to extra compensation, under the act of 1888. It being conceded that employment on clerical work for the first eight hours did not affect his right to the annual salary under the act of 1887, how can it be claimed that employment upon such work during the extra hours in any manner affects his right to the extra pay given by the act of 1888?

It was conceded in the argument in behalf of the United States in the Court of Claims (27 C. Cls. 244, 249), that "up to the limit of eight hours of service all carriers stand precisely upon the same footing of equality; their salary is earned howsoever their time may be employed." "But," as to extra work and pay, it was insisted (p. 250) that "the legislation which we are considering in so far as the same changes the manner of compensation, also has relation to the character of the service required to be performed in establishing the basis of the claim and the extra service necessary in order that a right to extra compensation shall be maintained."

But no intention to discriminate in the character of the work required to earn the regular salary and that required to earn the extra pay appears in the act of 1888, or any other legislation relating to letter-carriers. How then can the courts enforce a discrimination not contained in the law? And how can it be said which is the regular, and which the extra service? *e. g.* if a carrier delivers mail for eight hours, and works two hours in the office, during which hours is he earning his regular salary, and during which his extra pay? It would seem

rather arbitrary to make it depend on which service was performed first.

7. Conclusion.

The terms of the statute being entirely plain and free from all ambiguity, there can be no occasion to invoke any of the rules which have been laid down by the courts for the interpretation of doubtful statutes. If, however, any such rules are required in order to guide the court, they should not be those applicable to statutes making special grants of public lands or other property, or of special privileges.

The statute before the court is not of that character, but is one fixing the compensation of a class of public officers. As to all such enactments the rule is that "where the words of a statute prescribing compensation to a public officer are loose and obscure, and admit of two interpretations, they should be construed in favor of the officer." *United States* v. *Morse*, 3 Story, 87.

But it is unnecessary to indulge in any refinements. As was said in *United States* v. *Klein*, 13 Wall. 128, 148, "The simplest statement is the best." Or to borrow the language of the Court of Claims in a recent case, "Statutes are ordinarily plain, and need only their own words for interpretation. In this law, no phrases of technical or doubtful import are used. Statutes are to be read on the lines, and not between the lines, to be properly interpreted. As is very tersely stated in a brief in this case: 'The clearest guide to the meaning of a statute is the statute itself. If words are plain, there is no room for construction or interpretation.'" (*Jaeger* v. *United States*, 27 C. Cls. 278, 286.)

The reason, and the conclusive reason, why this claimant is entitled to extra pay is that the statute has so enacted. It has said that "if any letter-carrier is employed

a greater number of hours per day than eight, he shall be paid extra for the same." This does not define the class of work for which a carrier shall receive extra pay. If he is "employed," he is entitled to extra pay. The employment, not the character of the employment, is the test of his right. The purpose of the act is clear—extra work is to have extra pay. It would be singular if its plain language could be interpreted away by a strained construction leading to a total defeat of its object.

It would be a remarkable result, if a carrier employed during extra hours should be denied extra pay on the ground that he was compelled to do work which ought not to have been required of him. The statute means to compensate him for extra work by giving him extra pay. He is none the less entitled to the extra pay, if his superior officer unjustly requires him to perform duties for which others should have been employed.

The claim made in this case, it will be observed, covers only extra hours of actual work. It has been insisted by the carriers from the time this statute was enacted, that the eight hours named in it were intended as *consecutive* hours. This we believe to be the proper construction, as it is that generally, if not universally, placed upon similar laws affecting labor. But its enforcement in that particular is a question of administration, a default in which is perhaps remediable only by writ of *mandamus* or some similar proceeding. No question is presented in this case but that of a carrier who, after eight hours of actual employment, is actually employed for additional hours, for which he demands additional compensation. Surely, to such a demand, the statute gives but one answer, and that a favorable one.

It is hardly necessary to consider questions which do, or may arise, in other cases which are now before the Court of Claims or may hereafter be presented to it. In

United States v. *Phisterer*, 94 U. S. 219, 225, this court said:

"The briefs submitted contain suggestions of what would be the result in various cases, which, it is said, may arise under these regulations. Our judgment is intended to be given upon the precise case before us, and upon no other. Should other cases be presented, the Court of Claims will give them the attention required, as will this court, should they come here. Both courts have business enough to occupy them, without anticipating cases which may never be presented."

Still less attention is due to the suggestion of counsel noticed by the court below in this opinion (p. 11) that "this eight-hour law may operate as a bounty on tardiness and unnecessary delay." Not only does no attempt to increase the hours of work appear in the present case, but on the contrary the finding is, that the claimant and his associates strongly objected to these excessive hours, and were required against their will to perform the duties. (Finding IV, p. 3.)

When a case of tardiness and unnecessary delay, for the purpose of earning additional compensation, shall come before this court, it will be time enough to consider any such question. "When cases of fraud appear, they will be determined on their own circumstances." Lord Mansfield, in *Whitcomb* v. *Whiting*, 1 Smith's Leading Cases, 7th American Edition, 941, 942.

As no ground appears for depriving the claimant of the benefit of the statute, we ask that the judgment of the Court of Claims be affirmed.

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